

United States District Court
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MARC A. MANZO
No. 42139-044

v.

G. MATEWARE, et al.

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CIVIL ACTION NO. 3:19-CV-812-S-BK

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. *See* ECF No. 20. Plaintiff filed objections. *See* ECF No. 21. The District Court reviewed *de novo* those portions of the findings, conclusions, and recommendation to which objection was made, and reviewed the remaining findings, conclusions, and recommendation for plain error. Finding no error, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

Accordingly, this action will be summarily **DISMISSED WITH PREJUDICE** for failure to state a claim. *See* 28 U.S.C. § 1915(e)(2)(B). This dismissal will count as a “strike” or “prior occasion” within the meaning of 28 U.S.C. § 1915(g).¹

The Court prospectively **CERTIFIES** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a)(3). In support of this certification, the Court adopts and incorporates by reference the Findings, Conclusions, and Recommendation of the United States Magistrate Judge. *See Baugh v. Taylor*, 117 F.3d 197, 202 and n.21 (5th Cir. 1997). Based on the Findings, Conclusions, and Recommendation of the United States Magistrate

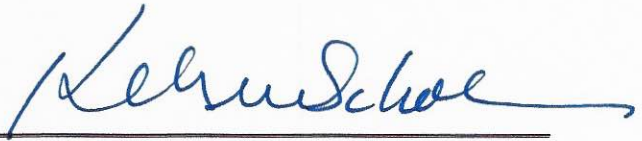
¹ 28 U.S.C. § 1915(g), commonly known as the “three-strikes” provision, provides: “[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section, if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.”

Judge, the Court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (per curiam).²

In the event of an appeal, Plaintiff may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; FED. R. APP. P. 24(a)(5).

SO ORDERED.

SIGNED January 5, 2022.


UNITED STATES DISTRICT JUDGE

² Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order. A timely notice of appeal must be filed even if the district court certifies an appeal as not taken in good faith.